



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,578	10/19/2000	Mark Salerno	948-5	6508
23869	7590	08/25/2005	EXAMINER	
HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791			MCALLISTER, STEVEN B	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/692,578	SALERNO, MARK
	<b>Examiner</b>	<b>Art Unit</b>
	Steven B. McAllister	3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 02 June 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 51-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 51-65 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/02, 1/02, 4/04.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 51-53, and 56-65, are rejected under 35 U.S.C. 103(a) as being unpatentable over Savage (6,026,372) in view of Walker et al (6,298,331).

Savage shows a processing circuit; a food product status switch associated with a storage location and coupled to the circuit, comprising the ECR entry panel 21 and means for providing the "finished input" 13 (see, e.g. col. 4, lines 55-60); and a food process status indicator associated with the storage location coupled to the processing circuit capable of showing first and second states associated with an occupied storage location and an unoccupied storage location, respectively and in response to the food product status switch. Savage does not explicitly show a storage timer associated with the storage location or indicating a third status when storage time of a food product has been exceeded. Walker et al show a storage timer associated with the storage location or indicating a third status when storage time of a food product has been exceeded (see e.g., Fig. 8). It would have been obvious to one of ordinary skill in the art to modify the apparatus of Savage by providing the storage time and status indicator as taught by Walker et al in order to reduce waste.

Art Unit: 3627

As to claim 52, Savage in view of Walker show the status indicator having a fourth state showing that cooking should commence. It does not explicitly show that the fourth state starts when the storage time exceeds difference between the acceptable hold time and the cook time. However, to do so is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to further modify the method of Savage by providing a fourth state in the conditions claimed in order to avoid out of stock, or low stock, situations.

As to claims 56 and 57, and 62, Savage in view of Walker et al show a remote pan fill level display.

As to claims 58 and 59, Savage in view of Walker et al show an activity level, the pan fill level changing as a function of the activity level (see e.g., Fig. 4)

As to claim 60 and 61, Savage in view of Walker et al show an activity level switch for changing the activity level in response to time of day or events (e.g., col. 3, lines 17-23).

As to claim 62, Savage in view of Walker et al show an activity level display, comprising at least the manager's display, located remotely from the storage location.

As to claims 63 and 64, Savage in view of Walker et al show display and a menu associated with the storage location having a pan fill level associated with it and having a selectable menu switch. They do not explicitly show that the menu is selectable. However, selectable menus associated with POS terminals are notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to further

Art Unit: 3627

modify the method of Savage by providing a selectable menu in order to provide a simple method of operating the POS terminal.

As to claim 65, Savage in view of Walker et al show all elements except that the food product status switch is in alignment with the food product pan in the storage area. However, it would have been obvious to one of ordinary skill in the art to further modify the apparatus of Savage by providing a switch in alignment with the food storage pan in order to provide a signal based on actual conditions in the storage area.

Claims 54-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Savage in view of Walker et al as applied to claim 51 above, and further in view of Koether (5,875,430)

Savage in view of Walker et al show all elements except an active switch associated with the storage area wherein the indicator has a seventh state indicating that the area is not being used. Koether shows these elements (e.g., Fig. 7A). It would have been obvious to one of ordinary skill in the art to further modify the apparatus of Savage by providing these elements in order to prevent malfunctioning apparatus from being used until it has been repaired.

#### ***Response to Arguments***

Applicant's arguments filed 6/2/2005 have been fully considered but they are not persuasive.

The Savage rejection has been withdrawn and the associated arguments are therefore moot.

As to the Savage in view of Walker arguments, Applicant argues that claim 51 is improperly rejected because Walker does not show a timer associated with the storage location timing the aging of the items and providing a third indication upon their expiration. This appears to be shown in at least Fig. 10A, items 238 and 244.

Regarding the other elements, the examiner believes that they are shown in Savage.

As to claims 56 and 57, the examiner respectfully disagrees and believes that Savage shows a pan fill level display comprising displays 12, 15.

As to claims 58 and 59, it is noted that the activity level corresponding to sales is embedded in the system database of Savage. As periods of historically increasing sales are approached, the pan fill level changes accordingly. It is further noted that the claims do not recite that the activity level is a "current" activity level.

As to claims 60 and 61, applicant argues that the rejection is improper because the specification does not show "changing the activity level without loading new data". It is noted that the argued limitation is not claimed.

As to claim 54, applicant argues that the combination does not show all elements. The examiner respectfully disagrees, Koether shows a switch which disables and provides and provides a corresponding indication on a display.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is 571-272-6785. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3627

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steven B. McAllister  
Primary Examiner  
Art Unit 3627



Steven B. McAllister

STEVE B. MCALLISTER  
PRIMARY EXAMINER